

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DAVID I. SCOTT,

Plaintiff,

v.

MACY'S INC.; CITIGROUP, INC.;  
EXPERIAN CORPORATION, et al.  
and Partnerships, Corporations, and/or  
other entities 1-100,

Defendants.

NO: 1:14-CV-3141-TOR

ORDER RE: DEFENDANTS'  
MOTIONS TO DISMISS

BEFORE THE COURT are the following motions: (1) Defendant Macy's, Inc.'s Motion to Dismiss (ECF No. 10); (2) Citigroup, Inc.'s Motion to Dismiss (ECF Nos. 11); (3) Plaintiff's Motion to Strike Defendant's Motion to Dismiss and for Leave of Court to File an Amended Complaint (ECF No. 18); and (4) Plaintiff's Notice of Withdrawal of Experian Corporation as a Party and Dismissing All Claims Against Experian Corporation with Prejudice (ECF No. 25). These matters were submitted for consideration without oral argument. The

1 Court has reviewed the briefing and the record and files herein, and is fully  
2 informed.

### 3 BACKGROUND

4 Plaintiff David Scott, proceeding *pro se*, asserts claims for breach of  
5 contract, fraud/deceptive business practices, and violation of numerous consumer  
6 protection statutes. ECF No. 5. Defendants Macy's and Citigroup have filed  
7 motions to dismiss for failure to state a claim. ECF Nos. 10; 11. Mr. Scott has  
8 moved to strike this motion, amend his Complaint, and voluntarily dismiss  
9 Experian Corporation as a Defendant. ECF Nos. 18, 25.

### 10 FACTS

11 The following facts are drawn principally from Mr. Scott's Complaint, as  
12 well as the materials incorporated by reference and attached for this Court's review  
13 by Macy's,<sup>1</sup> and are accepted as true for purposes of the instant motion. *Bell Atl.*  
14 *Corp. v. Twombly*, 550 U.S. 544, 556 (2007).

15 <sup>1</sup> Although the court's review on a 12(b)(6) motion to dismiss is generally limited  
16 to the contents of the complaint, "[a] court may consider evidence on which the  
17 complaint 'necessarily relies' if: (1) the complaint refers to the document; (2) the  
18 document is central to the plaintiff's claim; and (3) no party questions the  
19 authenticity of the copy attached to the 12(b)(6) motion." *Marder v. Lopez*, 450  
20 F.3d 445, 448 (9th Cir. 2006). "The court may treat such a document as 'part of

1 In January 2007, Mr. Scott applied and was approved for a Macy's credit  
2 card. ECF No. 5 ¶ 28. With this card, Mr. Scott had two lines of credit: one for in-  
3 store purchases and one for purchases outside the store, initially through Visa and  
4 then through American Express. *Id.* ¶¶ 28, 30, 35. Mr. Scott was provided a  
5 \$1,200 in-store line of credit and a \$4,000 out-of-store line of credit. *Id.* ¶ 32. By  
6 January 2009, Mr. Scott's in-store line of credit increased to \$2,500, and his out-  
7 of-store line of credit increased to \$8,000. *Id.* ¶¶ 33, 34.

8 Although Mr. Scott contends he maintained a "perfect record of on-time  
9 payments," Macy's decreased Mr. Scott's out-of-store line of credit from \$8,000 to  
10 \$2,900 in response to information obtained from Equifax Credit Info Services, a  
11 consumer reporting agency. *Id.* ¶ 41. Macy's provided Mr. Scott notice of this  
12 decrease in April 2013, three days before the decrease would go into effect. *Id.* ¶¶  
13 41, 72. Macy's further decreased Mr. Scott's out-of-store line of credit in July to  
14 \$2,800, *id.* ¶ 59, and then again in November 2013 to \$2,700, *id.* ¶ 60. Plaintiff  
15 acknowledges that the first reduction "may have been justified as a business  
16  
17

---

18 the complaint, and thus may assume that its contents are true for purposes of a  
19 motion to dismiss under Rule 12(b)(6).'" *Id.* (quoting *United States v. Ritchie*, 342  
20 F.3d 903, 908 (9th Cir. 2003)).

1 decision to limit Macy's financial exposure,"<sup>2</sup> but that the other two reductions  
2 were "clearly punitive." *Id.* ¶ 61.

3 In March 2014, due to a severe reduction in his Social Security monthly  
4 payments, Mr. Scott was unable to make his minimum monthly card payment to  
5 Macy's. *Id.* ¶ 47. Although he informed Macy's that his payment would be late,  
6 Macy's billing department nonetheless called Mr. Scott demanding payment. *Id.*  
7 ¶¶ 48-49. Mr. Scott asserts that Macy's continued to "badger" him for payment.  
8 *Id.* ¶ 62.

9 In June 2014, Mr. Scott attempted to use his in-store line of credit at Macy's.  
10 *Id.* ¶ 53. Although Mr. Scott's card's expiration date was September 2015, Mr.  
11 Scott had admittedly not used the card for in-store purchases in the past twelve  
12 months. *Id.* ¶¶ 53-54. Mr. Scott acknowledges that the cardholder agreement  
13 required a minimum annual dollar amount charged on the department store account  
14 in order to retain membership. *Id.* ¶ 55. In an attempt to "reactivate" his card, Mr.  
15 Scott contends he was "deceived" into applying for a new card. *Id.* ¶ 54. Macy's  
16 subsequently denied Mr. Scott's application, citing "Serious Delinquency" and  
17 <sup>2</sup> Mr. Scott acknowledges the "business decision" Macy's made when it initially  
18 reduced his line of credit from \$8,000 to \$2,900 in light of his defaulted GESA  
19 Credit Union account and his use of card to place a \$1,500 down payment on a  
20 vehicle. ECF No. 5 ¶ 44.

1 “Ratio of Balance to Limit on Bank Revolving or other Revolving Accounts Too  
2 High” as the key factors for its denial. *Id.* ¶ 57.

3 In May 2014, for the period ending on May 22, 2014, Mr. Scott’s account  
4 was “over the limit” by \$12, which he attributes to the \$25 late fee imposed the  
5 previous month and his credit line reduction imposed in November 2013. *Id.* ¶ 51.

6 On July 14, 2014, Mr. Scott sent a “letter of dispute” to Macy’s. ECF No.  
7 10 at 18. In this letter, Mr. Scott asserted that he “DISPUTE[D] THE ENTIRE  
8 BALANCE” on his account and thus was “not obligated to pay anything on this  
9 disputed balance.” *Id.* Mr. Scott notified Macy’s that he was going to initiate a  
10 civil action to challenge the legality of the card agreement and any debt owed. *Id.*  
11 Macy’s acknowledged receipt of Mr. Scott’s letter on July 22, 2014, assuring Mr.  
12 Scott that it would investigate his inquiry. *Id.* at 23.

13 Mr. Scott filed the instant lawsuit on October 3, 2014, against Macy’s Inc.,  
14 Citigroup, Inc., and Experian Corp. ECF No. 5. This Court conducted the  
15 required screening of Mr. Scott’s Complaint and directed service on the named  
16 Defendants. ECF No. 6. This Court expressly stated that its sufficiency finding  
17 did not preclude Defendants from filing motions to dismiss on the grounds of  
18 frivolousness, maliciousness, or failure to state a claim. *Id.* at 2 n. 2.

19 In the motions presently before this Court, Macy’s and Citigroup move to  
20 dismiss Mr. Scott’s complaint for failure to state a claim, Mr. Scott moves to strike

1 Defendants' motion for dismissal and take leave to file an amended complaint, and  
2 Mr. Scott moves to voluntarily dismiss Experian Corporation as a Defendant.

### 3 DISCUSSION

4 A motion to dismiss for failure to state a claim tests the legal sufficiency of  
5 the plaintiff's claims. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). To  
6 withstand dismissal, a complaint must contain "enough facts to state a claim to  
7 relief that is plausible on its face." *Twombly*, 550 U.S. at 570. "Naked  
8 assertion[s]," "labels and conclusions," or "formulaic recitation[s] of the elements  
9 of a cause of action will not do." *Id.* at 555, 557. "A claim has facial plausibility  
10 when the plaintiff pleads factual content that allows the court to draw the  
11 reasonable inference that the defendant is liable for the misconduct alleged."  
12 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). While a plaintiff need not establish a  
13 probability of success on the merits, he or she must demonstrate "more than a sheer  
14 possibility that a defendant has acted unlawfully." *Id.*

15 A complaint must also contain a "short and plain statement of the claim  
16 showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). This  
17 standard "does not require detailed factual allegations, but it demands more than an  
18 unadorned, the defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at  
19 678 (quoting *Twombly*, 550 U.S. at 555). In assessing whether Rule 8(a)(2) has  
20 been satisfied, a court must first identify the elements of the plaintiff's claim(s) and

1 then determine whether those elements could be proven on the facts pled. The  
2 court should generally draw all reasonable inferences in the plaintiff's favor, *see*  
3 *Sheppard v. David Evans and Assocs.*, 694 F.3d 1045, 1051 (9th Cir. 2012), but it  
4 need not accept “naked assertions devoid of further factual enhancement.” *Iqbal*,  
5 556 U.S. at 678 (internal quotations and citation omitted).

6 Federal Rule of Civil Procedure 9(b) governs the pleading of allegations  
7 involving fraud or mistake. In contrast to the more lenient standard set forth in  
8 Rule 8(a)(2), Rule (9)(b) requires that a party “state with particularity the  
9 circumstances constituting fraud or mistake” in his or her complaint. To satisfy  
10 this standard, the allegations of fraud must “be specific enough to give defendants  
11 notice of the particular misconduct so that they can defend against the charge and  
12 not just deny that they have done anything wrong.” *Vess v. CibaGeigy Corp. USA*,  
13 317 F.3d 1097, 1106 (9th Cir. 2003) (quotation and citation omitted). Thus,  
14 “[a]verments of fraud must be accompanied by the who, what, when, where, and  
15 how of the misconduct charged.” *Id.* (quotation and citation omitted). A party  
16 may, however, plead allegations of “[m]alice, intent, knowledge, and other  
17 conditions of a person’s mind” more generally. Fed. R. Civ. P. 9(b).

18 In ruling upon a motion to dismiss, a court must accept all factual allegations  
19 in the complaint as true and construe the pleadings in the light most favorable to  
20 the party opposing the motion. *Sprewell v. Golden State Warriors*, 266 F.3d 979,

1 988 (9th Cir. 2001). The court may disregard conclusory allegations and  
2 arguments which are not supported by reasonable deductions and inferences. *Id.*

### 3 **A. Motion to Voluntarily Dismiss**

4 Federal Rule of Civil Procedure 41 governs dismissal of actions. A plaintiff  
5 may voluntarily dismiss an action, without leave of the court, if the notice of  
6 dismissal is filed “before the opposing party serves either an answer or a motion  
7 for summary judgment” or if the plaintiff presents “a stipulation of dismissal  
8 signed by all parties who have appeared.” Fed. R. Civ. P. 41(a)(1). Otherwise, “an  
9 action may be dismissed at the plaintiff’s request only by court order, on terms that  
10 the court considers proper.” *Id.* at 41(a)(2). “A district court should grant a  
11 motion for voluntary dismissal under Rule 41(a)(2) unless a defendant can show  
12 that it will suffer some plain legal prejudice as a result.” *Smith v. Lenches*, 263  
13 F.3d 972, 975 (9th Cir. 2001). The decision to grant or deny a motion pursuant to  
14 Rule 41(a)(2) is within the sound discretion of the court. *Sams v. Beech Aircraft*  
15 *Corp.*, 625 F.2d 273, 277 (9th Cir. 1980). District courts have broad discretion in  
16 deciding whether to dismiss actions *with* or *without* prejudice. *WPP Luxembourg*  
17 *Gamma Three Sarl v. Spot Runner, Inc.*, 655 F.3d 1039, 1058 (9th Cir. 2011).

18 Mr. Scott has moved to voluntarily dismiss, with prejudice, all claims  
19 against Experian Corporation. ECF No. 25. Although Experian has not yet  
20 appeared before this Court, Mr. Scott represents that he and Experian have



1 stipulated to dismissal with prejudice pursuant to a settlement agreement. *Id.* This  
2 Court finds no reason to deny Mr. Scott's request for voluntary dismissal.  
3 Accordingly, Mr. Scott's motion for voluntary dismissal (ECF No. 25) is  
4 **GRANTED.** Experian Corporation is dismissed with prejudice, along with all  
5 claims against it, including Plaintiff's Sixth Cause of Action ("Willful and  
6 Negligent Violation of 15 U.S.C. § 1681, ET SEQ. The Fair Credit Reporting  
7 Act"), which is alleged solely against Experian.

#### 8 **B. Plaintiff's Motion to Strike**

9 Mr. Scott moves to strike Macy's Motion to Dismiss on the grounds that the  
10 "motion is premature and/or out of order" pursuant to Federal Rule of Civil  
11 Procedure 4 or has otherwise been "filed in bad faith." ECF No. 18 at 2.  
12 Specifically, Mr. Scott objects to Macy's having filed its motion before any of the  
13 Defendants waived service or otherwise acknowledged receipt of service. *Id.* Mr.  
14 Scott also objects to certain statements in Macy's motion: the "patently false"  
15 accusation that Mr. Scott refers to his card as a Visa card throughout his  
16 Complaint, even though he explicitly acknowledges that it was later changed to an  
17 American Express card; and the statement that Mr. Scott admits the cardholder  
18 agreement requires at least one in-store purchase to be made in a twelve-month  
19 period, rather than acknowledging that it is a disputed material fact. *Id.* at 5-6.

1 In response, Macy's and Citigroup assert that they received notice of Mr.  
2 Scott's lawsuit on November 10, 2014, and subsequently appeared before this  
3 Court and filed their response on December 1, 2014, which response was due  
4 within 21 days of service. ECF No. 19 at 2-3. Thereafter, the U.S. Marshal's  
5 office contacted Macy's and Citigroup, requesting that they sign a waiver of  
6 service, which they promptly did. *Id.* at 3.

7 This Court finds no grounds to strike Macy's motion, nor any part thereof.  
8 Although Macy's and Citigroup did not return their waiver of service after they  
9 received notice of Mr. Scott's lawsuit, their appearance and corresponding filings,  
10 submitted on December 1, 2014, demonstrate that service was properly executed.  
11 Despite Mr. Scott's contention that he "was deprived of his substantial rights to  
12 proper service," this Court finds he has suffered no harm. Further, although the  
13 Court takes notice of Mr. Scott's objections—namely whether he properly referred  
14 to his card as an American Express card and whether it is a disputed issue of  
15 material fact that he needed to use his Macy's card within a twelve-month period—  
16 the Court does not find these statements particularly relevant or helpful to its  
17 determination of the pending motions. Accordingly, Mr. Scott's motion (ECF No.  
18 18) to strike Macy's motion, or any part thereof, is **DENIED**.

19 //

20 //

1 **C. Defendants' Motions to Dismiss<sup>3</sup>**

2 1. Breach of Contract

3 Mr. Scott alleges that Defendant Macy's breached the cardholder agreement  
4 when it decreased his credit limit without 45-days' notice. ECF No. 5 ¶ 72.

5 Although Mr. Scott acknowledges that the agreement explicitly stated "[Macy's]  
6 can increase or decrease [his] credit limit without giving [him] notice in advance,"  
7 he asserts that the provision, "unless required by law," supports his argument for  
8 breach. *Id.* In support, Mr. Scott cites to the Credit CARD Act of 2009, Title I,  
9 § 101(a)(2), which requires a 45-day notice of any "significant change" to a credit  
10 card account. *Id.* Thus, because Defendant Macy's only gave Plaintiff 3-days'  
11 notice before decreasing his credit limit, Plaintiff alleges this constitutes breach.

12 *Id.*

13 To prevail on his breach of contract claim, a plaintiff must establish: (1) the  
14 existence of a valid contract; (2) breach; and (3) damages. *Nw. Indep. Forest Mfrs.*  
15 *v. Dep't of Labor & Indus.*, 78 Wash. App. 707, 712 (1995). "[A] violation of  
16 statute is actionable only if the statute imposes a duty, the duty is breached, and the

---

17 <sup>3</sup> Although Citigroup filed a separate motion to dismiss, on the ground that none of  
18 the allegations in Mr. Scott's Complaint are made against Citigroup, it joins  
19 Macy's motion to the extent Mr. Scott is attempting to hold Citigroup, Macy's  
20 parent company, liable for Macy's conduct. *See* ECF No. 11.

breach was a proximate cause of damage to the claimant.” *Id.* (citing *Ward v. Zeugner*, 64 Wash.2d 570, 574-75 (1964)).

The Credit Card Accountability Responsibility and Disclosure Act of 2009 (“Credit CARD ACT”) requires advance notice for certain changes to a credit card account:

In the case of any credit card account under an open end consumer credit plan, a creditor shall provide a **written notice of any significant change, as determined by rule of the Bureau**, in the terms (including an increase in any fee or finance charge, other than as provided in paragraph (1)) of the cardholder agreement between the creditor and the obligor, **not later than 45 days prior to the effective date of the change.**

15 U.S.C. § 1637(i)(2) (emphasis added). The Bureau, defined in the statute as the Bureau of Consumer Financial Protection, 15 U.S.C. § 1602, is thus charged with defining what action constitutes a “significant change.” In its regulations, the Bureau states no notice is required when, among other things, “the change involves . . . a reduction of any component of a finance or other charge; suspension of future credit privileges . . .; or termination of an account or plan.” 12 C.F.R. § 1026.9(c)(2)(v). Conversely, the Bureau requires 45-day advance notice “before an over-the-limit fee or a penalty rate can be imposed solely as a result of the consumer exceeding the newly decreased credit limit.” *Id.* § 1026.9(c)(2)(vi).<sup>4</sup>

---

<sup>4</sup> As Defendants highlight, the Bureau’s website advises consumers that “[c]ard issuers generally can increase or decrease credit limits without giving [consumers]

1 This Court finds Mr. Scott has failed to state a claim for breach. Even  
 2 considering the Credit CARD Act and the Bureau's accompanying regulations,  
 3 Macy's was not required to provide Mr. Scott 45-days' notice before reducing his  
 4 credit line because such a reduction was not a "significant change" to his account.  
 5 Although Mr. Scott suffered over-the-limit fees on his account in May 2014, which  
 6 he attributes, in part, to Macy's reduction in credit, the final credit reduction to Mr.  
 7 Scott's account was made in November 2013; thus, 12 C.F.R. § 1026.9(c)(2)(vi),  
 8 requiring advance notice before an over-the-limit fee is imposed solely as a result  
 9 of the cardholder exceeding the recently reduced credit limit, is inapplicable to the  
 10 facts alleged. Accordingly, Mr. Scott's breach of contract claim must be  
 11 dismissed.

12 2. Willful & Negligent Violation of the Credit Card Accountability  
 13 Responsibility and Disclosure Act (Eighth Cause of Action)

14 Mr. Scott's Eighth Cause of Action similarly alleges that Macy's violated  
 15 the Credit CARD Act when it made "significant changes to the terms of [his]  
 16 notice, including reducing [a consumer's] credit limit so that [the consumer] no  
 17 longer [has] any available credit." *Ask CFPB*, Consumer Financial Protection  
 18 Bureau (updated July 26, 2012), [http://www.consumerfinance.gov/askcfpb/74/i-](http://www.consumerfinance.gov/askcfpb/74/i-just-discovered-that-the-card-issuer-has-reduced-my-credit-limit-and-i-no-longer-can-charge-anything-can-they-do-that.html)  
 19 [just-discovered-that-the-card-issuer-has-reduced-my-credit-limit-and-i-no-longer-](http://www.consumerfinance.gov/askcfpb/74/i-just-discovered-that-the-card-issuer-has-reduced-my-credit-limit-and-i-no-longer-can-charge-anything-can-they-do-that.html)  
 20 [can-charge-anything-can-they-do-that.html](http://www.consumerfinance.gov/askcfpb/74/i-just-discovered-that-the-card-issuer-has-reduced-my-credit-limit-and-i-no-longer-can-charge-anything-can-they-do-that.html).

1 revolving credit account” without providing the requisite 45-day notice. ECF No.  
2 5 ¶ 86. Although Mr. Scott cites 15 U.S.C. 1681s-2(a), which address the  
3 “[a]bility of a consumer to dispute information directly with furnisher,”<sup>5</sup> he  
4 references the Credit CARD Act and supports his claim with the allegation that  
5 Macy’s failed to give him 45-days’ notice each time it made a “significant change”  
6 to his account. This Court construes Mr. Scott’s Eighth Cause of Action as again  
7 alleging violation of the Credit CARD Act, 15 U.S.C. § 1637(i)(2). As discussed  
8 above, Macy’s did not violate this statute because its reduction of Mr. Scott’s  
9 credit line did not constitute a “significant change” under the statute of  
10 accompanying regulations. Accordingly, Mr. Scott’s Eighth Cause of Action must  
11 also be dismissed.

12 //

13 //

14 //

15 //

---

16 <sup>5</sup> Although the Fair Credit Reporting Act provides a private right of action in some  
17 instances, that right of action is limited to claims first disputed to the credit  
18 reporting agency. *See* 15 U.S.C. § 1681s-2(c); *Sanders v. Mountain Am. Fed.*  
19 *Credit Union*, 689 F.3d 1138, 1147 (10th Cir. 2012) (citing *Nelson v. Chase*  
20 *Manhattan Mortg. Corp.*, 282 F.3d 1057, 1059-60 (9th Cir. 2002)).

1                   3. Fraud/Deceptive Business Practices<sup>6</sup> (Second Cause of Action)

2                   Mr. Scott's Second Cause of Action alleges that Macy's engaged in a  
3 deceptive business practice when it "deceived" him into applying for a new  
4 Macy's card, rather than having his in-store credit reactivated. ECF No. 5 at 23.  
5 As clarified in his response briefing, Mr. Scott is alleging that it was both  
6 "deceptive and fraudulent to not reactivate the account" and "to cause [Mr. Scott]  
7 to apply for credit the merchant knew or should have known would not be  
8 approved." ECF No. 18 at 16. Because Mr. Scott's application was rejected, his  
9 credit and reputation were damaged and he "los[t] out on the \$10 Red Star  
10 Rewards Certificate he had earned." ECF No. 5 at 23.

11                  Washington's Consumer Protection Act ("CPA") provides that "[u]nfair  
12 methods of competition and unfair or deceptive acts or practices in the conduct of  
13 any trade or commerce are hereby declared unlawful." Wash. Rev. Code  
14 § 19.86.020. To assert a citizen suit under the CPA, a plaintiff must prove "(1) an  
15 unfair or deceptive act or practice, (2) occurring in trade or commerce, (3)  
16 affecting the public interest, (4) injury to a person's business or property, and (5)

---

17 <sup>6</sup> Although Plaintiff's Complaint provides no citation, Plaintiff clarifies in his  
18 response briefing that his Second Cause of Action is under common law fraud and  
19 Washington state law, which this Court construes as a claim under the Washington  
20 Consumer Protection Act, Wash. Rev. Code § 19.86.093.

1 causation.” *Panag v. Farmers Ins. Co. of Wash.*, 166 Wash. 2d 27, 37 (2009) (en  
2 banc) (citing *Hangman Ridge Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wash.2d  
3 778, 784 (1986)). “Whether a particular act or practice ‘unfair or deceptive’ is a  
4 question of law.” *Id.* at 47 (citing *Leingang v. Pierce Cnty. Med. Bureau, Inc.*, 131  
5 Wash.2d 133, 150 (1997)). “A plaintiff need not show the act in question was  
6 intended to deceive, only that it had the capacity to deceive a substantial portion of  
7 the public.” *Id.*

8 Here, this Court finds no factual allegations supporting a plausible claim for  
9 deceptive business practice. Namely, Mr. Scott’s allegations cannot satisfy the  
10 first element: that the act in question was an unfair or deceptive act or practice with  
11 the capacity to deceive a substantial portion of the public. Accordingly, his  
12 Complaint does not present any allegations to support a claim under the CPA.

13 Considering Mr. Scott’s allegations under the elements of a common law  
14 claim for fraud proves equally fruitless. Under Washington law, a plaintiff must  
15 establish the following elements to prove a claim for fraud: “(1) A representation  
16 of an existing fact; (2) its materiality; (3) its falsity; (4) the speaker’s knowledge of  
17 its falsity or ignorance of its truth; (5) his intent that it should be acted on by the  
18 person to whom it is made; (6) ignorance of its falsity of the part of the person to  
19 whom it is made; (7) the latter’s reliance on the truth of the representation; (8) his  
20



1 right to rely upon it; (9) his consequent damage.” *Kirkham v. Smith*, 106  
2 Wash.App. 177, 183 (2001).

3 Again, the only allegations Mr. Scott presents in support of his claim are  
4 that he attempted to use his in-store Macy’s card, was “deceived” into applying for  
5 a new one rather than reactivating his current one that he admittedly had not used  
6 within the last twelve months, and, as a result, his credit was damaged and he was  
7 denied use of a \$10 Rewards Certificate. These allegations do not support a claim  
8 for fraud; namely, what conduct by the Macy’s employee who assisted Mr. Scott in  
9 applying for a new Macy’s card constitutes representation of a false, material fact  
10 actionable under common law fraud. Accordingly, Mr. Scott’s Second Cause of  
11 Action is dismissed.

12 4. Willful & Negligent Violation of the Fair Credit Billing Act (Third &  
13 Fifth Causes of Action)

14 Mr. Scott’s Third and Fifth Causes of Action allege that Macy’s violated the  
15 Fair Credit Billing Act (“FCBA”) when it failed to timely respond to his request to  
16 correct a billing error and attempted to collect the disputed amount on his bill.

17 The FCBA sets forth the procedural requirements when a credit card holder  
18 disputes charges on his billing statement. Pursuant to 15 U.S.C. § 1666(a), an  
19 obligor has 60 days from the time he receives his bill to provide the creditor  
20 written notice of any disputed charges. In this notice of a billing error, the obligor

1 “(1) sets forth or otherwise enables the creditor to identify the name and account  
2 number (if any) of the obligor, (2) indicates the obligor’s belief that the statement  
3 contains a billing error and the amount of such billing error, and (3) sets forth the  
4 reasons for the obligor’s belief (to the extent applicable) that the statement contains  
5 a billing error.” 15 U.S.C. § 1666(a)(1)-(3). The creditor must then, within 30  
6 days after receipt of this notice, “send a written acknowledgment thereof to the  
7 obligor.” *Id.* § 1666(a)(3)(A). Thereafter, the creditor, “not later than two  
8 complete billing cycles of the creditor (in no event later than ninety days) after the  
9 receipt of the notice and prior to taking any action to collect the [disputed]  
10 amount,” must either make appropriate corrections to the account or send written  
11 explanation or clarification explaining why the charges are valid. *Id.*  
12 § 1666(a)(3)(B).

13 Here, Mr. Scott sent a letter of dispute to Macy’s, disputing the entire  
14 amount on his bill, on July 14, 2014. Macy’s acknowledged receipt of Mr. Scott’s  
15 letter on July 22, 2014, confirming it would conduct an investigation into his  
16 inquiry. Mr. Scott did not present any information in his Complaint as to the  
17 length of his billing cycle, but considering the 90-day statutory term, Macy’s could  
18 not have finished its investigation and either corrected the charges or explained  
19 their validity because Mr. Scott filed suit on October 3, 2014—77 days after  
20 Macy’s acknowledgement letter.

1 Arguably, Mr. Scott's "letter of dispute" did not even trigger the statute's  
2 requirements. Mr. Scott's letter provided no detail as to which charges he  
3 disputed, the amount of these disputed charges, or the basis for him disputing  
4 "every last penny of the amount . . . purportedly owe[d]." ECF No. 10 at 19.  
5 Instead, Mr. Scott disputed "THE ENTIRE BALANCE ON ACCOUNT," which  
6 statement he expressly stated would then temporarily release him from any  
7 payment obligations. *Id.* at 18. Surely, the statute's intent is not to give consumers  
8 the right to allege generalized, blanket disputes of their bills in an effort to delay or  
9 avoid payment. If that were the case, then all obligors could temporarily avoid  
10 payment and force the creditors to investigate unsupported and unexplained  
11 disputes, all while being prohibited from collecting any payment. Accordingly,  
12 because Mr. Scott has failed to state a plausible claim for relief under the FCBA,  
13 his Third and Fifth Causes of Action must be dismissed.

14 5. Willful & Negligent Violation of the Fair Credit Reporting Act  
15 (Fourth & Seventh Causes of Action)

16 Mr. Scott's Fourth and Seventh Causes of Action allege that Macy's violated  
17 the Fair Credit Report Act<sup>7</sup> ("FCRA"). Mr. Scott alleges that Macy's violated the

18 <sup>7</sup> Specifically, Mr. Scott's Fourth Cause of Action cites to "THE FAIR CREDIT  
19 REPORTING ACT (FCRA), 15 U.S.C. § 1681s-2 § 6239(a)(1)(A)" and his  
20 Seventh Cause of Action cites to the "FACT Act § 312, amending 15 U.S.C. 1681-

1 Act when it “report[ed] disputed information with actual knowledge of errors” and  
2 “fail[ed] to have the offending credit line deleted from [Mr. Scott’s] credit file.”  
3 ECF No. 5 at 24-26.

4 FCRA prohibits a furnisher of financial information from reporting  
5 information it knows to be inaccurate. “[T]o ensure that credit reports are accurate,  
6 the FCRA imposes some duties on the sources that provide credit information to  
7 [credit reporting agencies], called ‘furnishers’ in the statute.” *Gorman v. Wolpoff*  
8 *& Abramson, LLP*, 584 F.3d 1147, 1153 (9th Cir. 2009). Under subsection (a) of  
9 the statute, “[a] person shall not furnish any information relating to a consumer to  
10 any consumer reporting agency if the person knows or has reasonable cause to  
11 believe that the information is inaccurate.” 15 U.S.C. § 1681s-2(a)(1)(A).  
12 Subsection (b) imposes a second category of duties on furnishers, triggered “upon  
13 notice of dispute,” when a person who furnished information to a credit reporting  
14 agency receives notice from the credit reporting agency that the consumer disputes  
15 the information. *Id.* § 1681s-2(b); *see id.* § 1681i(a)(2).

16 FCRA provides a private right of action for willful or negligent  
17 noncompliance but such right is limited to claims arising under subsection (b).

---

18 2 § 628,” “15 U.S.C. 1681 FCRA § 611(a)(1)(A),” and “15 U.S.C. 1681 FCRA  
19 §611(a)(5)(i;ii).” This Court construes Mr. Scott’s pleading as asserting causes of  
20 action under the Fair Credit Reporting Act, 15 U.S.C. § 1681s-2.

1 *Gorman*, 584 F.3d at 1154. Accordingly, a private right of action arises “only after  
2 the furnisher receives notice of dispute from a [credit reporting agency]; notice of a  
3 dispute received directly from the consumer does not trigger furnishers’ duties  
4 under subsection (b).” *Id.* (citing *Nelson*, 282 F.3d at 1059-60; *see* 15 U.S.C. §  
5 1681s-2(b)(1); *see also Sanders*, 689 F.3d at 1147 (“While [FCRA] also gives  
6 consumers a private right of action against those who violate its provisions . . . that  
7 right of action is limited to claims against the credit reporting agency; it does not  
8 extend to furnishers.”). Conversely, subsection (a) is exclusively enforced by  
9 federal and state officials. *Nelson*, 282 F.3d at 1059.

10 This Court finds Mr. Scott has failed to state a claim under FRCA. First,  
11 Mr. Scott’s claim fails under subsection (a) because he lacks standing to enforce  
12 this subsection. Second, Mr. Scott’s claim fails under subsection (b) because he  
13 has not presented any allegation that he first notified the credit reporting agency of  
14 his dispute. *Townsend v. Bank of Am., N.A.*, 445 Fed. App’x 908, 909 (9th Cir.  
15 2011) (“The district court properly dismissed the FCRA claims because there is no  
16 private right of action under 15 U.S.C. § 1681s-2(a) . . . , and [plaintiff] did not  
17 allege that he notified a credit reporting agency of his dispute, as required to trigger  
18 the duties set forth in 15 U.S.C. § 1681s-2(b) . . . .”). Accordingly, Mr. Scott’s  
19 Fourth and Seventh Causes of Action must be dismissed.

20 //

1           6. Negligent Infliction of Emotional Distress (Ninth Cause of Action)

2           Mr. Scott's Ninth Cause of Action alleges Defendants' conduct violated the  
3 tort of negligent infliction of emotional distress. In support, Mr. Scott states that  
4 the "unexpected and unfounded actions of Defendants in assessing Scott's account  
5 with late fees after notifying Scott that the items he disputed were being  
6 investigated and the further action of a plethora of phone calls attempting to collect  
7 the disputed debt and late fees" caused him "a great deal of mental and emotional  
8 anguish." ECF No. 5 at 27-28.

9           To establish the tort of negligent infliction of emotional distress, a plaintiff  
10 must show that (1) the defendant engaged in negligent conduct; (2) the plaintiff  
11 suffered serious emotional distress; and (3) the defendant's negligent conduct was  
12 the cause of the plaintiff's serious emotional distress. *See Hegel v. McMahon*, 136  
13 Wash.2d 122, 135 (1988). "As with any claim sounding in negligence, where a  
14 plaintiff brings suit based on negligent infliction of emotional distress '[the court]  
15 test[s] the plaintiff's negligence claim against the established concepts of duty,  
16 breach, proximate cause, and damage or injury.'" *Snyder v. Med. Serv. Corp. of E.*  
17 *Wash.*, 145 Wash.2d 233, 243 (2001). In addition to the traditional elements of  
18 negligence, a plaintiff must show an "objective symptomology" that is susceptible  
19 to a medical diagnosis. *Kloepfel v. Bokor*, 149 Wash.2d 192, 196-97 (2003) (en  
20 banc).

1 Mr. Scott has failed to establish that Defendants owed him a duty,  
2 subsequently breached that duty, or that he has suffered emotional distress  
3 “susceptible to medical diagnosis.” Rather, Mr. Scott merely re-alleges the same  
4 facts that form the basis of the above dismissed claims. Such allegations do not  
5 support a cause of action for the tort of negligent infliction of emotional distress.  
6 Accordingly, Mr. Scott’s Ninth Cause of Action must also be dismissed.

7 **D. Plaintiff’s Motion for Leave to Amend Complaint**

8 Rule 15(a) provides that, except in circumstances not present here, “a party  
9 may amend its pleading only with the opposing party’s written consent or the  
10 court’s leave,” which “[t]he court should freely give . . . when justice so requires.”  
11 Fed. R. Civ. P. 15(a)(2). The Ninth Circuit has directed that this policy be applied  
12 with “extreme liberality.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048,  
13 1051 (9th Cir. 2003) (citation omitted). Unless it is absolutely clear that  
14 amendment would be futile, a *pro se* litigant must be given the opportunity to  
15 amend his complaint to correct any deficiencies. *Lopez v. Smith*, 203 F.3d 1122,  
16 1130–31 (9th Cir. 2000) (en banc).

17 Mr. Scott filed his initial Complaint in this action on October 3, 2014. ECF  
18 No. 5. He then moved this Court to grant leave to file an amended complaint on  
19 December 24, 2014, ECF No. 18, attaching a Proposed Amended Complaint to  
20 request, ECF No. 18-1. Macy’s and Citigroup oppose these proposed amendments

1 because they fail to overcome any deficiencies in his original Complaint but  
2 simply insert additional state law citations that are either inapplicable or  
3 nonexistent. ECF No. 19 at 4-5. Before this Court could consider Mr. Scott's  
4 request to amend, he filed an Amended Complaint on January 16, 2015, which  
5 differs from both the original and proposed versions. ECF No. 24.

6 It is clear from this Court's review of both Mr. Scott's Proposed Amended  
7 and Amended Complaints that he will not be able to correct the deficiencies as  
8 addressed in this Order. Although he attempts to bolster his Complaint with  
9 additional citations to state statutes, which Defendants aptly note are either  
10 nonexistent or inapplicable, he alleges no additional allegations that form the basis  
11 for any plausible claims. Any additional amendments would clearly be futile.  
12 Accordingly, Mr. Scott's motion to amend (ECF No. 18) is **DENIED** as futile.

### 13 **E. Revocation of *In Forma Pauperis* Status**

14 Pursuant to 28 U.S.C. § 1915(a)(3), "[a]n appeal may not be taken *in forma*  
15 *pauperis* if the trial court certifies in writing that it is not taken in good faith." The  
16 good faith standard is an objective one, and good faith is demonstrated when an  
17 individual "seeks appellate review of any issue not frivolous." *See Coppedge v.*  
18 *United States*, 369 U.S. 438, 445 (1962). For purposes of 28 U.S.C. § 1915, an  
19 appeal is frivolous if it lacks any arguable basis in law or fact. *Neitzke v. Williams*,  
20 490 U.S. 319, 325 (1989).



1 This Court finds that any appeal of this Order would not be taken in good  
2 faith and would lack any arguable basis in law or fact. Accordingly, the Court  
3 hereby revokes Plaintiff's *in forma pauperis* status.

4 **ACCORDINGLY, IT IS HEREBY ORDERED:**

5 1. Defendants Macy's, Inc.'s and Citigroup, Inc.'s Motions to Dismiss  
6 (ECF Nos. 10; 11) are **GRANTED**.

7 2. Plaintiff's Motion to Strike Defendant's Motion to Dismiss and for Leave  
8 of Court to File an Amended Complaint (ECF No. 18) is **DENIED**.


9 3. Plaintiff's Notice of Withdrawal of Experian Corporation as a Party and  
10 Dismissing All Claims Against Experian Corporation with Prejudice (ECF No. 25)  
11 is **GRANTED**.

12 4. Plaintiff's *in forma pauperis* status (ECF No. 4) is **REVOKED**.

13 All claims and causes of action in this matter are hereby **DISMISSED** with  
14 prejudice for failure to state a claim. The District Court Executive is hereby  
15 directed to enter this Order, enter **judgment** accordingly, provide copies to counsel  
16 and Plaintiff at his address of record, and **CLOSE** the file.

17 **DATED** January 30, 2015.



  
THOMAS O. RICE  
United States District Judge